

REMARKS

Claims 459-469 and 471-473 remain in this application. Claim 470 has been cancelled.

In order to expedite prosecution of the present application, and also to format the claim language to conform with that of an apparatus claim, claim 470 has been canceled and its limitations incorporated into its base claim – claim 459. Claim 459, as amended, recites a system for processing the sale and purchase of items, comprising: (a) a storage device; and (b) a processor connected to the storage device, the storage device storing a program for controlling the processor; and the processor operative with the program to: (i) receive sell offers from a seller and bargain offers from a buyer, including conditions for purchase and a payment identifier, thereby defining said bargain offer; (ii) carry out a bargaining process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and said seller; (iii) arrange for the purchase of said at least one item by said buyer from said seller at said price; and (iv) provide a graphic display, adapted to graphically depict a probability for system acceptance of buyer's offer for purchase of the product. Present claims 460-469 and 471-473 has been amended to correct certain informalities which are discussed hereinafter. The amendments to the claims are clearly supported by the original specification; particularly at page 5, lines 2 – 9; page 15, lines 17 – 20; page 19, line 8 to page 20, line 10; and page 51, line 18 to page 54, line 18. Consequently, no new matter has been added.

Applicant's invention provides an electronic bargaining system that enables buyers to bargain with the system in order to negotiate an optimum bargain price and that enables sellers to sell or list their products by bargaining with the system to negotiate the

best-offered price. The system permits purchase and sale of goods to be transacted at a bargained for price that represents the best bargain obtained by the parties. A bargained for price for transactions consummated by the electronic bargaining system is reached by the parties in a highly reliable manner. Principal attributes of that bargained for price are those captured by the characterization: “Our Best Bargain, Your Best Bargain”.

Claim Objections

Claim 460 was objected to because of improper capitalization.

The Examiner has indicated that claim 460 has numerous instances of words that are improperly capitalized, such as “Authenticity” and “Price”. In order to overcome this objection, claim 460 has been amended to set forth the words “Authenticity” and “Price” in lowercase form.

Accordingly, reconsideration of the objection to claim 460 because of improper capitalization is respectfully requested.

Claims 463, 465, 468, 469, 470, and 473 were objected to because of improper use of quotation marks and the use of unconventional terminology.

The Examiner has indicated that the quotation marks should be removed in the claims. In accordance with the Examiner’s suggestions, all quotation marks have been removed from the claims.

The Examiner has further indicated that such concepts as “Bargain Guru”, “Bargainometer” and “Bargainmeter” in the claims would raise administrative red flags in further rounds of patent prosecution. The Examiner indicated that other examiners

suggested replacing the term “Bargain Guru” with the term “online shopping assistant.” In accordance with the Examiner’s suggestions, the term “Bargain Guru” has been replaced with the term “online shopping assistant” in all of the claims. Further, the phrases “Bargainometer” and “Bargainmeter” have been removed from the claims.

Accordingly, reconsideration of the objection to claims 463, 465, 468, 469, 470, and 473 because of improper use of quotation marks and the use of unconventional terminology is respectfully requested.

Claim Rejections – 35 USC § 112

Claims 459-473 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner has indicated the following. The claims are generally narrative in form and replete with indefinite functional and/or operational language, and idiomatic errors. Such claim language fails to conform to current US practice. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claims must be in one sentence form only. Note the format of the claims in the patent cited.

Regarding claim 459, the Examiner has indicated that this claim is directed to neither a process nor a machine, but rather embraces and/or overlaps two different statutory classes of invention deemed ambiguous under 35 USC 112. *In Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990). The Examiner has indicated that, in the

instant case, claim 459 embraces and/or overlaps the statutory classes of a system with a process.

It is submitted that in view of the amendments to the claim language of claim 459, that this claim complies with the claim language for an apparatus claim and does not embrace and/or overlap the statutory classes of a system with a process. Applicant further submits that the formatting of present apparatus claims 459-469 and 471-473 is in the same format as the patent cited by the Examiner – US Patent No. 5,794,207 to Walker et al. (see apparatus claims 12-22). Therefore, it is submitted that present claim 459 is in compliance with 35 USC 112, second paragraph.

Regarding claims 459-473, the Examiner has indicated a lack of antecedent basis due to claim language terminology. The Examiner has indicated that the claim language utilizes changing and/or inconsistent terminology to such a degree as to make the claims vague and indistinct.

It is submitted that in view of the amendments to the claim language of claims 459-469 and 471-473, that these claims follow appropriate claim language terminology. Therefore, it is submitted that present claims 459-469 and 471-473 are in compliance with 35 USC 112, second paragraph.

Regarding claims 460-473, the Examiner has indicated that these claims lack antecedent basis due to improperly numbered dependencies.

It is submitted that in view of the amendments to claims 460-469 and 471-473, that these claims now include the proper dependency numbers. Therefore, it is submitted that present claims 460-469 and 471-473 are in compliance with 35 USC 112, second paragraph.

Regarding claims 460 and 473, the Examiner has indicated that claim language in claim 460 such as “configured to verify the legitimacy / authenticity / condition of said product” is indefinite as it is unclear whether the applicant intends “/” to indicate “and”, “or” or is merely establishing synonyms. The Examiner has indicated that claim 473 suffers from a similar problem.

It is submitted that in view of the amendments to claims 460 and 473, that these claims have removed the occurrences of the symbol “/”. Therefore, it is submitted that present claims 460 and 473 are in compliance with 35 USC 112, second paragraph.

Regarding claims 470 and 473, the Examiner has indicated that the phrase “such as” and the use of examples with the claim language renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

It is submitted that in view of the amendments to claims 459 and 473, that these claims have removed the occurrences of the phrase “such as”. Therefore, it is submitted that present claims 459 and 473 are in compliance with 35 USC 112, second paragraph.

Accordingly, reconsideration of the rejection of claims 459-469 and 471-473 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is respectfully requested.

Claim Rejections – 35 USC § 103

Claims 459-473 were rejected under 35 USC 103(a) as being unpatentable over Walker (US Patent 5,794,207) in view of Miller (Miller, Michael. The Complete Idiot’s Guide to Online Auctions. Que. 1999. pp. 7-43).

Walker discloses a method and apparatus for effectuating bilateral buyer-driven commerce. The present invention allows prospective buyers of goods and services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer. In a preferred embodiment, the apparatus of the present invention includes a controller which receives binding purchase offers from prospective buyers. The controller makes purchase offers available globally to potential sellers. Potential sellers then have the option to accept a purchase offer and thus bind the corresponding buyer to a contract. The method and apparatus of the present invention have applications on the Internet as well as conventional communications systems such as voice telephony.

Regarding previously presented claim 470, the Examiner has indicated that Walker discloses the elements of this claim by stating that Walker discloses each element of previously presented claim 459 and is “further configured to provide a graphic display (video monitor). (see fig. 3-4).” The Examiner did not provide any support in Walker for the claim language of previously presented claim 470 which states that the graphic display is “adapted to graphically depict a probability for system acceptance of buyer’s offer for purchase of the product”. The Examiner has not considered this language presumably because the previously presented claim 470 included this language after the use of the phrase “such as,” and the Examiner objected to this language stating that it was unclear whether the limitations following the phrase are part of the claimed invention.

Significantly, it is submitted that Walker in view of Miller does not disclose or suggest a system for processing the sale and purchase of items, comprising, *inter alia*, a

processor that provides a graphic display, adapted to graphically depict a probability for system acceptance of buyer's offer for purchase of the product. Therefore, in view of the amendment to present claim 459, which now incorporates all the limitations of previously presented claim 470, it is submitted that present claim 459 patentably defines over Walker in view of Miller.

Claims 460-469 and 471-473 depend from currently amended claim 459, which is submitted to be patentable for the reasons set forth hereinabove. Inasmuch as claims 460-469 and 471-473 contain all the limitations of independent amended claim 459, it is submitted that these dependent claims are also patentable over Walker in view of Miller.

Applicant further submits that the Examiner has not established a *prima facie* case of obviousness against claims 464-465, 467-469, and 471-473 because the Examiner has not provided any prior art reference that teaches or suggests the limitations as recited by these dependent claims. Instead, applicant respectfully submits that such combination is only found by hindsight reasoning and/or applicant's own disclosure. See MPEP 2142 *et seq.*

Accordingly, reconsideration of the rejection of claims 459-469 and 471-473 under 35 USC 103(a) as being unpatentable over Walker in view of Miller is respectfully requested.

Conclusion

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. The allowance of present claims 459-469 and 471-473 is earnestly solicited.

Respectfully submitted,
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